

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 369

Senior Judges

SPONSOR(S): Ambler

TIED BILLS: None

IDEN./SIM. BILLS: SB 1584

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Bond	De La Paz
2)	Criminal & Civil Justice Policy Council			
3)	Criminal & Civil Justice Appropriations Committee			
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The Chief Justice of the Supreme Court of Florida can appoint retired justices or judges, who are usually referred to as senior judges, to serve in judicial positions on a temporary basis. The courts use senior judges for temporary duty, for instance, to cover for an ill judge.

This bill allows a local judicial circuit to create a program whereby one party to a case can request that a senior judge be appointed to the case in order to expedite the resolution of the case. The requesting party is required to advance the cost of the senior judge. The prevailing party in the litigation may seek reimbursement from a losing party for any monies advanced for the use of a senior judge under this program.

This bill may have an indeterminate negative fiscal impact on state and local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

A "senior judge" is an honorary designation that refers to a retired judge serving on assignment to temporary judicial duty. The Florida Constitution and the Florida Rules of Judicial Administration allows the Chief Justice of the Supreme Court to temporarily assign retired justices or judges to any court in which they are qualified to serve.<sup>1</sup> The Florida Rules of Judicial Administration define a retired judge as a judge who is not engaged in the practice of law and who has been a judicial officer of this state.<sup>2</sup> Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years.<sup>3</sup>

Section 25.073, F.S., provides that a retired justice or judge is a former justice or judge who is not engaged in the practice of law and who has not been defeated in seeking re-election or has not failed to be retained in seeking retention in his or her last judicial office.<sup>4</sup> No person may serve more than 60 days on temporary duty during a year without the approval of the Chief Justice.<sup>5</sup>

Retired judges may receive compensation as set by law.<sup>6</sup> Only persons who meet the qualifications set forth in s. 25.073(1), F.S., may be compensated for service as retired justices or judges. Currently law sets the compensation for retired justices or judges at not less than \$200 per day.<sup>7</sup> According to the Florida Supreme Court's office, retired justices or judges are currently paid \$350 per day for service.<sup>8</sup> In addition, retired justices or judges are entitled to necessary travel expenses.<sup>9</sup>

The Code of Judicial Conduct prohibits retired justices or judges from practicing law or accepting any assignment in which the judge's present financial business dealings or other extra-judicial activities might be affected. A retired justice or judge is permitted to serve as a mediator and may be associated

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<sup>1</sup> Article 5, Section (2)(b) Florida Constitution; Florida Rule of Judicial Administration 2.030(a)(3)(A)

<sup>2</sup> Florida Rule of Judicial Administration 2.030(a)(3)(B)

<sup>3</sup> See Fla.R.Jud.Admin. 2.150.

<sup>4</sup> Section 25.073(1), F.S.

<sup>5</sup> See s. 25.073(2)(a), F.S.

<sup>6</sup> See Fla.R.Jud.Admin. 2.030(a)(3)(A).

<sup>7</sup> See s. 25.073(2)(a), F.S.

<sup>8</sup> Email correspondence from the State Courts System, dated March 18, 2009, on file with the Civil Justice & Courts Policy Committee staff.

<sup>9</sup> Section 25.073(2)(b), F.S.

with mediation or alternative dispute resolution firms. A retired justice or judge is required to disclose any negotiations or agreements for the provision of mediation services between the judge and any parties or counsel on cases that the judge is assigned to adjudicate.

The state courts utilize the following internal procedures: A retired judge seeking appointment as a senior judge must submit an application to the Chief Justice of the Supreme Court of Florida's office. The Chief Justice's office then requests information from the Judicial Qualifications Committee to determine if there is any reason why that person should not be a senior judge. After the Judicial Qualifications Committee responds to the Supreme Court, the justices review the application and the clerk's office notifies the applicant if the application is accepted. If the application is accepted, the senior judge becomes eligible for service and can be appointed to serve by the chief judge of a district or circuit court.<sup>10</sup>

### **Effect of Bill**

This bill amends s. 25.073, F.S., to allow the chief judge of a circuit to create a program to use senior judges to expedite cases in the circuit. Any such program must be approved by the Chief Justice. Any such program must follow the following provisions:

- Any party to the litigation may request that a senior judge be appointed.
- The requesting party or parties must advance the cost for employing the senior judge.
- The minimum time for employment of a senior judge employed under the program is one day.
- The senior judge is paid at the court system's regular daily per diem rate for senior judges.
- The cost of the senior judge may be taxed as costs against the nonprevailing party.
- The additional court paid by the requesting party is deposited into the Operating Trust Fund within the state courts system.
- Only senior judges who are otherwise eligible for appointment may be used in the program.

This bill further provides that funds collected under the program may not diminish or otherwise affect legislative appropriations to judicial circuits for the use of senior judges; and the use of the program may not diminish or otherwise affect the power and authority of the Chief Justice to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the justice or judge is qualified or to delegate to a chief judge of a judicial circuit the power to assign justices or judges for duty in that circuit.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 25.073, F.S., regarding retired justices or judges assigned to temporary duty.

Section 2 provides an effective date of upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

Indeterminate. Revenues to the state are dependent upon the how much the program is utilized.

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<sup>10</sup> Telephone Conversation with Della White, office of former Chief Justice R. Fred Lewis, Supreme Court of Florida (January 2, 2008).

2. Expenditures:  
Indeterminate, see Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
Indeterminate, see Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Participants who elect to utilize a senior judge will be required to pay the regular per diem rate of such judges.

**D. FISCAL COMMENTS:**

The bill provides that the State Courts System is to charge participants the total per diem cost of employing a senior judge. Senior judges are paid on a daily rate of \$350 as an OPS employee. The term "cost" should include the daily rate plus other costs to the state including the Social Security and Medicaid match (7.65%, or \$26.78) and travel per diems. To that extent, revenues should equal expenditures for the appointed senior judge. This bill may, however, increase other costs to the state.

The bill does not discuss where the trials will be conducted, but it appears that the trials will be conducted in regular courtrooms in county courthouses. If the effect of this bill is to increase the total number of trials conducted in the state, the state will incur increased expenditures for juror compensation and the counties will incur increased expenditures for maintenance of courtrooms, security costs, and other incidental expenses.

If there is a large enough demand for the private assignment of senior judges, this demand could diminish the short supply of senior judges to the point where the State Courts System might have to increase the daily per diem for senior judges or perhaps may not have sufficient senior judges to meet the current needs of the court system. In either case, the State Court System would be negatively affected.

For FY 2008-2009, the trial courts were appropriated \$2,466,243 from the General Revenue Fund for compensation to retired judges.<sup>11</sup>

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 21 of the Florida Constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." One possible interpretation of this bill is that it may allow the sale of the judiciary by allowing wealthier litigants the ability to advance the cost for the services of a judicial officer under this program in order to avoid court delays to the possible detriment of other less fortunate litigants who, if not on the prevailing

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<sup>11</sup> Ch. 2008-152, L.O.F., appropriation 3240.

side, may be ordered to pay the compensation for the retired judge who service was requested by the opposing party.

Paragraph (3)(e) provides that the funds collected and expended under this program may not otherwise affect judicial appropriations. It appears that the intent of this section may be to allow monies to be paid to senior judges through this program without affecting the current appropriation for senior judges necessary to regular court operations. This section may be in conflict with art. VII, s. 1(c), of the Florida Constitution, which provides: "No money shall be drawn from the treasury except in pursuance of appropriation made by law."

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

n/a